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Students' Louisiana Constitutional Convention

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PRESIDENT GIBSON, MR. CHAIRMAN AND DELEGATES TO THE THIRD ANNUAL STUDENTS' LOUISIANA CONSTITUTIONAL CONVENTION:

You assemble here today as delegates in keeping with the best traditions of democracy of which we are a part. Yours is the privilege of examining through this convention the processes of your Government. You may criticize its shortcomings, debate means for its improvement and, as delegates here, - young though you are - you are nevertheless free to formulate such proposals for changes as in your wisdom and judgment will best adapt the Constitution to present needs. Even a convention conceived solely as a part of education entails serious responsibilities in our time. Who knows, but that you as citizens, may soon have a responsibility similar to that with which you are here experimenting? You are to be congratulated at the opportunity that is yours. Northwestern State College is likewise to be commended for the vision and statesmanship with which it conceives this undertaking. This convention represents a contribution toward achieving that objective of education in a free society which a distinguished University president has said is "to cultivate in the largest number of our future citizens an appreciation of both the responsibilities and the benefits which come to them because they are Americans and are free." Your civics courses are to be brought from your classrooms into action. You will act, realizing that constitutional government can be no stronger than each constituent part. Government must be effective at national, state and local levels. Its efficiency must be subjected to constant study and examination if political institutions, as we know them, are to perform their functions and survive the assaults made upon them.

To draft or to amend a constitution, as you are asked to do here, is a privilege denied to millions upon millions of your fellow human beings in vast expanses of the world. Behind the iron curtain, or in unhappy China falling to the communist yoke, freedom of expression in the criticism of governmental processes

as you here indulge in would be unthinkable. This sobering thought gives significance to your task. It suggests that we consider the meaning of a constitution today.

Recently I returned from the American occupied zone of Germany where I sat as one of the judges at the Nurnberg war crime trials. Perhaps a few random illustrations, taken from the trials, will show some of the things made possible when a Constitution is no more.

Consider the concentration camps - these arose in Germany as the means of terrorizing and subjecting the German people to the absolute control of the Nazi leaders. The concentration camps of Germany were originally used to imprison without trial ^{who} all/ were opposed to the Government; with the aid of a ruthless secret police, the concentration camps became places of organized and systematic murder, where millions of people were destroyed.

Consider the persecution of the Jews - despite their rights of citizenship the Jews were completely excluded from German life; deprived of their professions, their means of livelihood. Pogroms were organized; looting of Jewish property was openly encouraged; confiscatory decrees were enforced. The unfortunate Jewish people, who had committed no crime, were forced to live in ghettos; they were used as slave labor; they were murdered by the millions. From these repressive measures it was only a short step to what Hitler called the "final solution" of the Jewish question; execution of plans for their complete extermination as an incident to the waging of Germany's criminal wars.

I recall from one of the cases the testimony of a German factory supervisor who had witnessed many of the horrors in the extermination by the SS of the Jewish people in the occupied East. He described in minute detail how the unfortunate victims were herded together around huge pits dug to receive hundreds of bodies and how they would be directed behind the huge mounds of earth to be shot. Words cannot describe the true horror of such atrocities, but I recall one particularly moving paragraph. He said:

"During the fifteen minutes that I stood near the pit I heard no complaint or plea for mercy. I watched a family of about eight persons, a man and woman, both about 50 with their children of about one, eight, and ten, and two grown up daughters of about twenty to twenty-four. An old woman with snow-white hair was holding the one year old child in her arms and singing to it. The child was cooing with delight. The couple were looking on with tears in their eyes. The father was holding the hand of a boy about ten years old and speaking to him softly; the boy was fighting his tears. The father pointed to the sky, stroked his head, and seemed to explain something to him. At that moment the SS man at the pit shouted something to his comrade. The latter counted off about twenty persons and instructed them to go behind the earth mound. Among them was the family which I have mentioned*****"

If we multiply this a million-fold, in our minds, we may have some idea of what the loss of protection of a constitutional government can mean.

You have all heard of the Warsaw ghetto, and its destruction by the Germans. Let me digress to tell you the story of Dr. Maurycy Szpilfogel, seventy-five years of age, a successful chemical manufacturer in the small Polish town of Wola. Miraculously he escaped from the Warsaw ghetto. He appeared as a witness before the Tribunal on which I sat. He made a moving spectacle, one you would never forget. Permit his story to be related in his own words:

"In the first year of the German occupation, during which I lived in Warsaw, the conditions for Jews, although terrible, did not imply constant mortal danger. Even so, street raids did take place even in those days, and even then there were 'interrogations' which merely consisted in shooting the Jews who were chosen for them. Everybody who lived in Warsaw and surroundings knew about these conditions.

"In 1940 the Germans started to create the infamous Warsaw Ghetto into which I and my family had to move in November 1940."

"I remained in the Ghetto until the end of July, 1942. The Ghetto was ostensibly administered by its inmates; the purpose of this was to force the Jews to introduce the measures which were intended to lead to their extermination. When the liquidation of the Ghetto had begun, it was the task of the President of the Jewish Council, amongst other things, to segregate by order of the SS a certain number of Ghetto Jews, to begin with, 5000, later raised to 10,000 per day, and to have them taken into a collecting center in the Ghetto, the so-called Umschlaglager (Collecting point). In time it became generally known that these people who were sent to the collecting point formed a so-called annihilation column

which was intended for immediate extermination. One of the extermination camps was Treblinka. When the President of the Jewish Council received the order to send 10,000 instead of 5,000 of his co-religionists daily to their deaths, and since he had in the meantime realized the true character of this segregation (to begin with the inhabitants of the Ghetto were given to believe that it was a matter of allocation of farm labor), he wrote a note to the effect that he refused his cooperation, and poisoned himself.

"The Germans then themselves undertook the collection of Jews intended for extermination by having single houses, blocks of houses or whole rows emptied, ordering everybody to concentrate in the street which was surrounded by soldiers. Anyone who went back into the house was immediately shot. Those who had been collected in the street were taken to the collecting point, loaded on trucks and taken to meet their fate. One day in July 1942 it was the turn of my block of houses and I had to go down into the street. The column of people thus segregated was accompanied by carts onto which were loaded the sick, the halt and lame, and those who were close to collapse. Under the pretext that I wanted to travel on one of these carts I was able to leave the crowd surrounding me and to reach the cart. I fully realized that I was in danger of being shot on the spot. At one of the earlier collections a small boy who had hurried towards a cart had lost his life in this fashion, i.e. by shooting. On reaching the cart I discovered an open house door through which I managed to escape. I hid for some time and then returned to my empty house in the Ghetto. In order to prevent such moves the Germans sometimes raided the already emptied houses. My brother, together with his whole family, consisting of his wife, his daughter, his son-in-law and his small grandchild, lost his life in this way. They had at first successfully left the column on its way to the collecting point, but were discovered during the subsequent raid. When the Germans were again approaching my already emptied house I climbed onto the roof and hid there until the Germans had left. In this precarious situation I received the aid of my ex-janitor who had established connections with smugglers as a result of various presents. Risking their own lives, these smugglers provided a ladder for me and at night helped me to climb the wall which separated the Ghetto from the Christian part of Warsaw. There I received a forged passport and spent the next two, or so, years in Warsaw. From my shelter I watched the burning of the Ghetto in the days of its final annihilation in the spring of 1943.

"The following of my nearer relatives were murdered in addition to my brother and all his dependents whom I have already mentioned: my other brother and all his family, my sister, all the four brothers and sisters of my wife, two of them with all their family, as well as my son-in-law and my own son whom I mentioned in my letter to von Schnitzler. I myself had to remain hidden until the spring of 1945 when the Germans were driven out.

"I then went back to my old factories at Wola. The chemical factory had been thoroughly looted.*****

Consider the German judiciary - a German citizen had been sentenced to a prison term for violation of a tyrannical Hitler decree. Hitler put in a personal telephone call to the Ministry of Justice lodging a protest at the lightness of the sentence. Although the case had been concluded the Court nullified the earlier sentence and the Ministry of Justice was able to inform Hitler: "the ten year sentence against the German citizen Schlitt was quashed within ten days and he was sentenced to death and executed at once." When a courageous German judge sentenced a Nazi police officer for extorting a confession from a German by beating, Himmler quashed the sentence and promoted the police officer to be the Minister of the Municipal Police. - These were every day occurrences when an entire judicial system was transformed into a tool for the propagation of Nazism, and the extermination of all opposition thereto.

Stories of this sort might be multiplied many million-fold and there is only some slight indication of the human agony which has been inflicted upon the continent of Europe. How did these things come about? They were made possible by the rise of the police state which set at naught all constitutional provisions designed for the protection of the fundamental human rights and liberties a constitution is designed to protect. When Hitler suspended the Constitution he became the supreme arbiter of life and death in Nazi Germany; there were no courts to protect the oppressed; the courts themselves became instrumentalities of torture and oppression. There was no independent legislative branch to launch its protest. Freedom was completely banished in the police state. Persecution unlimited on racial and political grounds became the accepted order of the day. There was no arresting the criminal tide launched by Hitler. It engulfed the continent. Constitutional guarantees were no more. The Constitution was a scrap of paper. From suspension of the Constitution in Nazi Germany, it was only a short jump to the doctrine that the German state was above all law, that it might embark upon world conquest launching wars of aggression to be conducted ruthlessly in violation of all

principles of humanity and international law and in violation of all conceptions of human rights. Millions of lives had to be expended to prevent the tide from permanently engulfing the world.

May we next turn back the pages of history 162 years to Philadelphia, Pennsylvania, May 25, 1787, to tell again a story familiar to each of you. Delegates from twelve of the thirteen states of the weak American Confederation to draft a Constitution were assembled. The deficiencies of the Articles of Confederation were laid bare. Plans were proposed for establishment of a stronger central government based on a union of sovereign states. There were sharp clashes of viewpoint, compromises but eventually consensus. A constitution was brought forth and submitted to the states for ratification. When New Hampshire became the ninth state to ratify the document, the new Constitution of the United States of America became a reality effective in March of 1789. We all know that opposition and concern over whether that constitution was sufficiently explicit as to the rights of individuals and the rights of the constituent states themselves, led to the adoption of the safeguarding amendments we know as the Bill of Rights or first ten amendments. The first ten amendments protected the basic rights of the people including freedom of religion; freedom of speech and of the press; the right to bear arms; restrictions on the quartering of troops; protection from unreasonable searches and seizures; providing constitutional safeguards to insure a fair trial to persons charged with crime; consecrating the principle that no one shall be deprived of life, liberty or property without due process of law; preserving the right to jury trial in civil cases. The Bill of Rights made it plain that the Government the people were creating in that Constitution originated in grants of power to a central government given by the people; and that the enumeration in the Constitution of certain rights, should not be construed to deny or disparage others retained by the people. That Constitution brought forth the political invention of federalism. It was a novel concept to have two levels operating over the same area and over the same people, each empowered to tax and to make and enforce its own laws without interference by the other.

But it has worked for one hundred sixty-two years. The Constitution conceived of a central government of limited or delegated powers enumerated in the Constitution and state governments with reserved powers. Legislative, executive and judicial branches were established with "checks and balances" in their division of functions as the guaranty against too great concentration of authority in any branch. The Constitution contained within itself the means by which it might be amended. But, including the first ten amendments in the Bill of Rights, it has been amended only twenty-one times in the course of the history of our nation. It is rightly considered one of the most constructive political documents of all times. In the language of the great Chief Justice Marshall "****a Constitution intended to endure for ages to come and, consequently, to be adapted to the various crises of human affairs." The Constitution provided an unique solution of the age-old problem of reconciling governmental powers with conceptions of law. A great American statesman, has pointed out: "The problem that confronted our fathers when they came to form an indestructible union of indestructible states was how to reconcile liberty and law; how to protect those rights of free men for which they had given their blood and treasure; how to make liberty ordered liberty; how to reconcile individual freedom with strong and effective government. They did this by establishing limitations upon official powers, by defining the rights of the states and the rights of the Union."

As Americans we know how well the founding fathers performed their task. The Constitution they formulated has given stability to American life; it has served as our charter of government as we grew from thirteen states along the Atlantic seaboard into a mighty nation from the Atlantic to the Pacific. That Constitution has piloted us to our present position of leadership in world affairs. It has survived each crisis and challenge - the searing issues of secession, slavery and reconstruction; panics and depression; even two catastrophic world wars. In the span of your young lives you yourselves have been contemporaries to the impacts of two of the latest major crises - First, the New Deal which has brought with it a sweeping conception of national supremacy as the means of meeting the complex problems of our modern highly

industrialized society and the complex economic interrelations which it creates; Second, World War II in which Nazi Germany and imperialist Japan, the would-be conquerors of the world, were defeated in a total war which witnesses the introduction of a new age - your age - the Atomic age. You are living witnesses as we approach a third crisis of our time - the challenge to constitutional government under a rule of law.

We have surmounted each crisis under our Constitution because it is a living document admitting of necessary adaptation through the processes of interpretation and amendment. The power of the Supreme Court to interpret the Constitution and to pass upon the validity of congressional and state legislation has provided flexibility. This was well described by a famous Louisianian - Edward Douglas White - who sat for twenty-seven years on the United States Supreme Court and who became its Chief Justice. While serving as United States senator from Louisiana, Edward Douglas White said:

"The glory and ornament of our system which distinguishes it from every other government on the face of the earth is that there is a great and mighty power hovering over the Constitution of the land to which has been delegated the awful responsibility of restraining all the coordinate departments of government within the walls of the governmental fabric which our fathers built for our protection and immunity."

Today the challenge of our age is whether constitutionalism under our system can survive. A distinguished authority has said: "****never in its long history has the principle of constitutionalism been so questioned as it is questioned today, never has the attack upon it been so determined or so threatening as it is just now. The world is trembling in the balance between the orderly procedure of law and the processes of force which seem so much more quick and effective. We must make our choice between these two and it must be made in the very near future."

I think your philosophy, as well as your choice, is clear. We are a nation dedicated to constitutional government subscribing to the doctrine that there are limitations upon governmental power to be reflected in a document we call the fundamental law or the Constitution; that there are broad areas in which government may not invade

human rights and freedom, even to achieve the good life. We prefer to risk the imperfections, to tolerate some inefficiencies, to forego some of the good that might be sought through governmental processes to prevent the greater evil in the threat to freedom that more efficient absolute government might bring. But in the world today a contrary philosophy opposed to this conception of Constitutional government is rampant - it is urged that peoples must be prepared to submit to evils - even such evils as the police state of absolute power - to secure such good as may be sought or procured by a more arbitrary government. Our Constitution has a vital meaning today in its existence as a challenge to the ideology which would ruthlessly suppress human freedom for mere materialistic gain. Orderly adaptation to change through law is provided through our Constitution and the structure of the Government which it creates. Constitutional concepts are not absolute; they may be given different shades of meaning in different factual settings as applied to the particular problem with which Governments must deal. As American citizens we must learn to accept this central fact, namely, that legislation and constitutional interpretation are our means of insuring that Governmental power is kept within reasonable bounds. As to the wisdom with which the powers of Government are exercised and even as to the extent of governmental power under the Constitution there will always be sharp clashes of viewpoint. But as Americans we must not allow such internal divisions in viewpoint to detract from our source of strength. If we are to preserve a strong America in the tradition of liberty which the founding fathers sought to preserve, those who advocate reform or change must be ever mindful of the pervading influence of a Constitution which regulates the means of achieving such objective, and those who would resist change must avoid the fallacy of seeing in the Constitution a meaning that would block all progress in attacking, through the medium of Government, the social and economic problems of our age. As has been properly stated: "Liberals must become more constitutional than some of them are and constitutionalists must become more liberal than most of them have been. We cannot get the needed redress of injustices

and abuses without reform, and we can never make these reforms lasting and effective unless we reduce them to the orderly processes of law."

How do these generalities have application to the tasks you undertake in this Constitutional Convention? They suggest the character of the task you must undertake. In Constitution drafting you will be engaged in making law - the fundamental and supreme law for the State of Louisiana. Make it as definite and certain as you can make it. A Constitution must provide for our State a framework of government and express the rights of democratic participation of our people in that government. Like our Federal Constitution, it also must contain that body of civil rights which protect the citizen against arbitrary power through official action of the State governmental structure which it creates.

As you approach Constitutional revision, I suggest that if you would strengthen our State's constitutional system you might consider declaring yourselves in favor of some of the following general principles:

First - recognition of the need for a shorter new constitution for Louisiana. Our Constitution is the longest of any of the forty-eight states. If we conceive of a constitution as setting up only the outlines of the government, our State Constitution is the worst existing example of a violation of that principle. Our Constitution is too detailed. It hampers the legislative process. Practically no problem related to governmental reorganization can be attacked without constitutional amendment. We have amended the Constitution so much that we have gravitated into a process of legislation by referendum of constitutional amendments submitted to the electorate under conditions making it impossible for the voters to express their views intelligently. Even a highway map setting forth the location of the State's major paved roads is a part of the Constitution. The Constitution, in its present form, serves to handicap important governmental units in the performance of their functions. We have created a snowball rolling down hill; the lengthier the constitution becomes through constitutional amendments, the greater the necessity for other amendments as most problems of state and local government will require legislation affecting the

constitution. I suggest that you would do well to consider for our State the pattern of simplicity and brevity set by the Federal Constitution.

Second, as to the Legislative Department, I urge you to declare yourselves in favor of a more efficient stronger legislative body which shall be freed of many of the numerous limitations now imposed upon the legislature in our Constitution. The present constitution reflects great distrust of our Legislature. We hear on every hand criticism of the tendency of the National Government to invade fields of legislation traditionally considered to have been reserved to the several States. Much of that has been necessary by the growth of commerce. But the tendency toward centralization will be accelerated unless we have efficient state legislatures, responsible to the people who elect them, properly and efficiently organized for performance of legislative functions under our federalized system. We should not stifle progress and needed reform by needless constitutional limitations on the legislature. We must place the power where it belongs in our elected representatives and we must insure that only men of the highest ^{and} ability, /character are sent to our legislature. I suggest that recognition of these fundamentals will make our democracy stronger and that these are vital needs in a new state constitution. Work long and hard on the composition of your legislature, the apportionment of legislators throughout the state, and in establishing the broad outlines of legislative organization and procedure; but, above all, give the legislature the requisite authority and hold legislators responsible to you, the electorate, for the manner in which they exercise that legislative authority.

Third, I suggest that you seriously consider declaring yourselves in favor of an Executive Department which would have sufficient authority concentrated in the State's Chief Executive so as to permit the affixing of responsibility in that office for the achievement of greater efficiency in the State's administrative organization. We have a multiplicity of boards and commissions. Administrative functions are widely scattered. I suggest that you consider the analogy to the Federal Constitution; that you consider seriously whether we need the existing of administrative offices written into the Constitution and whether the Constitutional basis should not be laid for a power of

reorganisation in the Chief Executive under a system of legislative authority. You must not overlook the fact that the State Government of today and tomorrow is no longer engaged solely in limited regulatory activities. It is a vital agency for the promotion of the public welfare and should be operated on efficient business-like lines and you - the electorate, should know where you may place the responsibility if the affairs of the State are not being properly administered.

Fourth, I suggest that the principles of authority and responsibility should be carried over into the Judiciary; that you should write into the Constitution the high qualifications you expect of your judges; that you consider a method of selection of judges combining an expression from the electorate with the advantages of the appointive system in obtaining men of high ability for judicial posts; that you declare yourselves in favor of an administrative supervision of judicial business vested in the Chief Justice of the Supreme Court and that a broad rule-making power be vested in the Supreme Court. I suggest that this portion of the constitution be recognised for what the judiciary must be under our constitutional system - the repository and the protector of our rights of property and our civil and human rights under a regime of law.

Fifth, I suggest that you give serious attention to the problems of our local units of government - our parishes and municipalities. These are close to the people. Their efficiency is a weather-vane of democracy in action. You should consider authorising provisions for home rule by local units; provisions encouraging consolidation of cities and parishes in the interest of efficiency; you might even consider whether there is anything sacred in existing parish lines if a parish is unable to function for lack of revenue; you must consider establishing a framework by which the work of these important units of local government can be adequately financed.

Lastly, I suggest you consider means for avoiding the multiplicity of

constitutional amendments with which we have been confronted since our Constitution of 1921. You may wish to make the method of amendment more difficult by a variety of devices, but you must realize that a more difficult method of amendment will be unworkable unless you are able to create a stronger more adequate state legislature freed of the numerous restrictions which have been operative in the past.

You will, of course, re-enact your expression of human and civil rights to which we are dedicated under our system of constitutional government. You will do well to plan wisely the constitutional basis for cooperative activity of Federal and State Governments in broad areas of the public welfare which government at all levels is now concerned.

Young delegates, as you approach your deliberations, I charge you: Wherever there is liberty there must be law - a constitution means wise restraints upon Government and individuals for the protection of human freedom consistent with conceptions of law. In your re-dedication to the idealism of constitutional government pursuant to law - you, as future citizens, and millions of young Americans like you, have it in your power to make a strong America stronger and to insure survival of our constitutional system in an uneasy and unstable world. I am confident that you, representing the future of America, will rise to every aspect of that challenge as you recognize the true meaning of a constitution today.